RICHARD E. NEVES

IBLA 82-1265 Decided November 29, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 23547, CA MC 23548.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

   Where a claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work or notice of intention to hold the claims, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

   The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. As a matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Richard E. Neves, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard E. Neves appeals the August 13, 1982, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Black Wonder and Black Wonder Extension quartz mining claims, CA MC 23547 and CA MC 23548, abandoned and void because no proof of labor or notice of intention to hold the claims was received by BLM prior to December 31, 1981, for that calendar year, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims had been located June 4, 1973, and were recorded with BLM April 3, 1979, along with 4 other claims. Proof of labor was filed with BLM September 7, 1979, and November 20, 1980, for CA MC 23547 and CA MC 23548, and other claims. A notice of intention to hold mining claims, filed with

BLM December 14, 1981, did not include CA MC 23547 or CA MC 23548. There is no evidence that the notice of intention to hold was recorded in Calaveras County, California, situs of the claims, as required by section 314 of FLPMA.

Appellant states the omission of CA MC 23547 and CA MC 23548 was inadvertent, assuming that the identifying numbers on the acknowledgement of the 1980 notice of intention to hold reflected new numbers occasioned by the change of Black Wonder to Black Wonder #1 in 1979. He asserts that the claims are being actively worked and that all requirements of the mining law have been complied with.

[1] Under section 314 of FLPMA, the owner of a mining claim located before October 21, 1976, must file, both in the office where the location notice is recorded and in the proper office of BLM, a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each year. This requirement is mandatory, and failure to comply by filing the appropriate instruments both in the county and with BLM is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim invalid and void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2, 3] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim, but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state office, whether proof of labor or notice of intention to hold the claim, in the proper BLM office. Where, as in this case, the notice of intention to hold did not include the Black Wonder, CA MC 23547, or the Black Wonder Extension, CA MC 23548, there was no discretion under the statute for BLM to determine that those claims had not been abandoned. We recognize that appellant's error was inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements or to afford relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrorey, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

> The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D.Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellant may wish to consult with the BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge